

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JESUS OMAR BENITEZ,

Case No. 3:19-cv-00180-LRH-CLB

Petitioner,

v.

ORDER

ISIDRO BACA, et al.,

Respondents.

This is a habeas corpus proceeding under 28 U.S.C. § 2254. Respondents have filed a motion to dismiss (ECF No. 15) in response to Benitez's petition for writ of habeas corpus (ECF No. 9). Respondents argue that the lone claim in the petition is not cognizable as a ground for federal habeas relief and, alternatively, that Benitez has failed to exhaust state court remedies for the claim. Benitez has not filed a response to the motion to dismiss. For reasons that follow, the court will grant the motion and dismiss the petition.

I. BACKGROUND

With his petition, Benitez, a Nevada prisoner serving consecutive sentences on several counts of robbery with use of a deadly weapon, challenges the manner in which the Nevada Department of Corrections (NDOC) has applied, or failed to apply, statutory credits to his sentence. ECF No. 9.

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1 In October 2017, Benitez filed a state habeas corpus petition challenging the
2 NDOC's failure to apply statutory credits to his minimum sentence. ECF No. 16-1. The
3 state district court entered an order directing the NDOC to verify the application of
4 statutory credits to Benitez's sentence and to provide a "new parole eligibility date on
5 his final sentence." ECF No. 16-6. In response to that order, the NDOC provided a
6 report verifying the application of statutory credits and recalculated Benitez's parole
7 eligibility date. ECF No. 16-7. The state district court entered a final order concluding
8 that the NDOC's recalculation had complied with its prior order. ECF Nos. 16-8/9.

9 Benitez appealed, arguing that the NDOC did not properly recalculate his
10 sentence. ECF No. 16-14. In January 2019, the Nevada Court of Appeals entered an
11 order affirming the lower court's resolution of Benitez's habeas petition. ECF No. 16-19.

12 Benitez initiated federal proceedings on or about March 27, 2019, by mailing or
13 handing to a prison official for mailing, his federal petition for writ of habeas corpus. ECF
14 No. 9. On June 10, 2019, this court filed Benitez's federal habeas corpus petition. *Id.*

15 On January 28, 2020, respondents filed the motion to dismiss now before the
16 court for decision. ECF No. 15.

17 II. DISCUSSION

18 Respondents argue that Benitez's petition does not state a cognizable federal
19 habeas claim because it is based entirely on the Nevada appellate court's application of
20 Nevada law, in particular, Nev. Rev. Stat. § 209.4465 and *Williams v. State Department*
21 *of Corrections*, 402 P.3d 1260 (Nev. 2017).

22 A federal writ of habeas corpus is not available with respect to claims based
23 solely on alleged errors in the interpretation or application of state law. *Wilson v.*
24 *Corcoran*, 562 U.S. 1, 5 (2010). To obtain habeas relief, a petitioner must demonstrate
25 a transgression of federal law binding on the state courts. *Id.* Thus, if the petitioner's
26 claim is premised merely on an alleged misapplication of state law, he fails to state a
27 cognizable claim for federal habeas relief. See *Lewis v. Jeffers*, 497 U.S. 764, 780
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1 (1990); *Christian v. Rhode*, 41 F.3d 461, 469 (9th Cir. 1994) (“Absent a showing of
2 fundamental unfairness, a state court's misapplication of its own sentencing laws does
3 not justify federal habeas relief.”).

4 On the other hand, a petitioner may state a cognizable claim for federal habeas
5 relief under the Due Process Clause where a state arbitrarily deprives him of a state
6 created liberty interest, which includes a prisoner's good-time credits. *See, e.g.,*
7 *Superintendent v. Hill*, 472 U.S. 445, 455 (1985) (holding that the requirements of due
8 process are satisfied only if “some evidence” supports the decision to revoke a
9 prisoner's good-time credits); *Wolf v. McDonnell*, 418 U.S. 539, 571–72 (1974) (holding
10 that a state-created right to good-time credits, which could be forfeited only for serious
11 misbehavior, constituted a liberty interest protected by the Due Process Clause);
12 *Fetterly v. Paskett*, 997 F. 1295, 1300 (9th Cir. 1993) (“[T]he failure of a state to abide by
13 its own statutory commands may implicate a liberty interest protected by the Fourteenth
14 Amendment against arbitrary deprivation by a state.”).

15 Here, Benitez does not allege that the State arbitrarily deprived him of statutory
16 credits to which he was otherwise entitled. Instead, his challenge presents a legal issue
17 that depends entirely on the construction of state law for its resolution. In other words,
18 his petition asks this court to overrule the Nevada courts' application of Nevada law to
19 his sentence, an undertaking plainly beyond the federal court's purview. Moreover,
20 Benitez cannot claim he was deprived of due process given that he petitioned the state
21 court for relief in relation to the calculation of his sentence, obtained some measure of
22 relief from the state district court, and was provided with appellate review of that
23 decision.

24 Thus, this court agrees that Benitez fails to state a claim upon which federal
25 habeas relief may be granted. For that reason, his petition will be dismissed. The court
26 need reach respondents' argument that Benitez failed to exhaust state court remedies
27 before proceeding in federal court.
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IT IS THEREFORE ORDERED that respondents' motion to dismiss (ECF No. 15) is DISMISSED. Benitez's petition for writ of habeas corpus (ECF No. 9) is DISMISSED with prejudice. The Clerk shall enter judgment accordingly and close this case.

DATED this 28th day of May, 2020.

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